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IN THE
COURT OF APPEALS OF INDIANA

ERIC CARPENTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0606-CR-286
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0506-FB-92767

January 9, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Eric Carpenter (Carpenter), appeals his conviction for Count I, rape, a Class B felony, Ind. Code § 35-42-4-1; Count III, criminal confinement, a Class D felony, I.C. § 35-42-3-3; Count VII, auto theft, a Class D felony, I.C. § 35-43-4-2.5; and his adjudication as a habitual offender, I.C. § 35-50-2-8.

We affirm.

ISSUE

Carpenter raises one issue on appeal, which we restate as follows: Whether the trial court appropriately sentenced him in light of the nature of the offense and character of the offender.

FACTS AND PROCEDURAL HISTORY

At approximately 2:00 a.m. on June 1, 2005, L.S. was walking in the 600 block of West Udell Street in Indianapolis, Indiana when she noticed a Jeep Cherokee pass her several times before stopping. Upon stopping, the driver of the vehicle, later identified as Carpenter, exited and confronted L.S. He grabbed her and pushed her inside the Jeep. After driving for a short distance, Carpenter stopped the car and pulled off L.S.' dress. Carpenter forced L.S. to have sexual intercourse with her while she struggled. After intercourse, Carpenter allowed L.S. to get dressed and told her that he would take her home. However, instead Carpenter drove to an alley near 2500 Shriver Avenue, where "there was further contact between" L.S. and Carpenter. (Transcript p. 18). Thereafter, Carpenter drove a short distance and shoved L.S. out of the Jeep. As she was pushed from the car, L.S. managed to note a partial license plate number. After reporting the

rape to the police, the license plate came back as being registered to a vehicle that had recently been stolen. Finally, the police located Carpenter in the area of 2500 Shriver Avenue, standing next to the stolen Jeep.

The next day, on June 2, 2005, the State filed an Information, charging Carpenter with Counts I-II, rape, Class B felonies; Count III, criminal confinement, a Class D felony; and Count IV, residential entry, a Class D felony. On July 7, 2005, the State amended the Information adding Count V, burglary, a Class B felony; Count VI, theft, a Class D felony; Count VII, auto theft, a Class D felony; Count VIII, criminal confinement, a Class D felony; and Count XI, intimidation, a Class D felony. Additionally, the State filed an habitual offender charge. On April 21, 2006, Carpenter entered into a plea agreement with the State, agreeing to plead guilty to Count I, rape, Count III, criminal confinement, Count VII, auto theft, and the habitual offender Count in exchange for dismissal of the remaining charges. With regard to sentencing, the plea provided for "a cap of thirty-five (35) years on the initial executed portion of the sentence." (Appellant's App p. 101-02). On May 5, 2006, following a sentencing hearing, the trial court sentenced Carpenter to fifteen years on Count I, enhanced by twenty years because of the habitual offender adjudication, and to a concurring two years each on Count III and Count VII, for an aggregate enhanced sentence of thirty-five years. The trial court reasoned, in pertinent part:

> Considering the factual basis that was admitted in the case that involved two assaults, considering the criminal history that all parties acknowledge to be significant and the fact that it appears to be escalating. I also believe that it's quite likely that this entire night was as indicated by [Carpenter] in the questionnaire, part of a culmination of his substance abuse gone wild.

> [Carpenter] was on informal probation when he committed a crime in '93. Most of the time people get tested for that. At some point I recognize that with his repeat involvement in the system, at some point he should have had the wake up call that drug use was getting him nowhere. I really can't find in mitigation his self-indulgence as a mitigator. To ingest drugs is a choice and he chose to do that. I think it had something to do, as he says in the questionnaire, with the particular incident. So, given those two things, he did accept responsibility but I also want to note he accepted responsibility some three hundred days into the case and considerable work was done by the State. So, while I'll give him some mitigation for that, it will below moderate weight given the time that it took for the case to be worked up. Having said all that, I think the criminal history, including the '86 burglary conviction, the possession of cocaine in '93, the robbery in '94, the burglary of an auto in '99, the burglary in '01 and the nature and circumstances of this crime involving multiple assaults, all warrant the imposition of the maximum sentence under the cap.

(Tr. pp. 28-29).

Carpenter now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Carpenter contends that his thirty-five year sentence is inappropriate in light of the nature of the offense and his character. He urges this court to reduce his sentence based on his life-long struggle with substance abuse and his acceptance of a guilty plea. Recently, in *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006), this court discussed in detail the rapid developments in Indiana's sentencing laws. We concluded, in pertinent part, "a claim that a sentence arose from an abuse of discretion under our statutory guidelines is no longer viable" since "trial courts are allowed to impose *any* sentence authorized by statute *regardless* of the presence or absence of aggravating and mitigating circumstances." *Id*. at 748. However, we will continue to include "an assessment of the trial court's finding and weighing of aggravators and mitigators" in our

independent review under Ind. Appellate R. 7(B). *Id*. As such, "the burden falls to the defendant to persuade the appellate court that his or her sentence is inappropriate" given that our review is by no way limited "to a simple rundown of aggravating and mitigating circumstances found by the trial court." *Id*. at 749.

First, Carpenter acknowledges that although the nature of the offense is troubling, it nevertheless is explained to some extent by his continuous, untreated struggle with substance abuse. We are not persuaded. The pre-sentence investigation reflects that Carpenter admits to using alcohol and drugs. He was introduced to alcohol at the age of 15 and started using cocaine at the age of 18. By the time he reached 19, he was a regular user of crack, ingesting up to three grams per day. While the trial court's observation that Carpenter's instant offense is likely "part of a culmination of his substance abuse gone wild" is probably a correct interpretation of events, it does not offer him a free ride. (Tr. p. 28). Carpenter's own voluntary self-indulgence cannot now be used as a feeble excuse to somehow mitigate a violent crime of forcibly raping a woman. Furthermore, the record is devoid of any evidence that Carpenter ever attempted to address his substance abuse problem. *See Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (defendant's awareness that he had an alcohol problem and never sought help for it could be considered an aggravating circumstance). Accordingly, we find Carpenter's sentence appropriate in light of the nature of the offense.

With regard to the character of the offender, we note, as did the trial court, Carpenter's long criminal history. Starting with mainly crimes against property and substance abuse charges, Carpenter has now escalated the violence. In the present case,

he threw his victim out of the car as a piece of trash after forcing himself on her. Although Carpenter now claims that he is entitled to some mitigation because he accepted a plea agreement, we are not impressed. While a guilty plea demonstrates a defendant's acceptance of responsibility for the crime, here, Carpenter did not recognize the severity of his actions until almost a year after the charges had been filed and numerous judicial resources had been expended in preparing the case for trial. *See Francis v. State*, 817 N.E.2d 235, 237-38 (Ind. 2004). Furthermore, in pleading guilty, Carpenter already received a substantial benefit by the State dismissing six charges resulting in not only a minimization of his total sentencing exposure, but he also received a reduced sentence by twenty-one years for those convictions to which he pled guilty. Accordingly, based on the evidence before us, we find that the trial court's sentence was appropriate in light of Carpenter's character.

CONCLUSION

Based on the foregoing, we find that the trial court appropriately sentenced Carpenter in light of the nature of the offense and character of the offender.

Affirmed.

KIRSCH, C.J., and FRIEDLANDER, J., concur.